ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–5879–2]

Extension of Interim Revised Durability Procedures for Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's action extends the applicability of light duty vehicle and light duty truck durability procedures to beyond the 1998 model year.

On January 12, 1993, EPA published a final rule establishing interim durability procedures used for demonstrating compliance with light duty vehicle and light duty truck emission standards, applicable in model years 1994–1996 only. On July 18, 1994, EPA published a direct final rule extending the applicability of the original rule to the end of the 1998 model year. Today's final rule extends the applicability of those durability procedures indefinitely. The Agency intends to conduct a separate rulemaking to implement a long-term durability program; however, such an action will be linked to other actions as part of a broad-based streamlining initiative for all vehicle emission compliance activities. It is difficult to predict with any precision when this subsequent action will occur. The Agency currently estimates that new compliance regulations will be promulgated such that they would become effective no earlier than the 2000 model year. Because the current durability regulations expire at the end of the 1998 model year, failure to adopt today's action would result in less effective and inefficient durability regulations beginning with the 1999 model year. The Agency believes that it is appropriate to extend indefinitely the existing interim procedures because so doing addresses lead time concerns for model year 1999 and beyond, accounts for the uncertainty of the anticipated revised compliance regulations and adds no new requirements, but rather simply allows the continuation of the current program.

DATES: This final rule is effective September 22, 1997.

ADDRESSES: Materials relevant to this final rule have been placed in Docket No. A–93–46. Additional documents of relevance may be found in Docket No. A–90–24. The docket is located at the above address in room M–1500, Waterside Mall, and may be inspected weekdays between 8:30 a.m. and noon, and between 1:30 p.m. and 3:30 p.m. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Linda Hormes, Vehicle Programs and Compliance Division, U.S. Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (313) 668–4502.

SUPPLEMENTARY INFORMATION:

The preamble and regulatory language are also available electronically from the EPA internet Web site. This service is free of charge, except for any cost you already incur for internet connectivity. The electronic version of this final rule is made available on the day of publication on the primary Web site listed below. The EPA Office of Mobile Sources also publishes these notices on the secondary Web site listed below.

Internet (Web)

http://www.epa.gov/docs/fedrgstr/EPA-AIR/ (either select desired date or use Search feature)

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I. Background

On January 12, 1993, the Agency published interim procedures for motor vehicle manufacturers to use in demonstrating compliance with emission standards for light-duty vehicles and light-duty trucks (58 FR 3994). That rule, referred to as the ''RDP I'' rule, made the interim procedures applicable to model years 1994 through 1996, but not thereafter. The Agency now plans to revise the RDP I interim procedures through a separate rulemaking in conjunction with other activities associated with a compliance initiative currently being undertaken by the Agency.

The Agency initially planned to promulgate a separate durability regulation, hereafter referred to as ''RDP II'' which was to become effective beginning with the 1997 model year. However, that became impractical due to lead time constraints for manufacturers wishing to certify vehicles in that model year and the uncertainty that sufficient lead time existed for implementation in the 1998 model year as well. Consequently, the Agency promulgated a direct final rule which extended the applicability of the RDP I interim rulemaking through model year 1998 (59 FR 36368). This was intended to provide manufacturers with timely notice of the regulations applicable for certifying vehicles through model year 1998 while EPA continued work on preparing and finalizing further technical and procedural improvements to the RDP II program. While work on the RDP II rule proceeded, various new events and actions precluded the timely completion of this project. In particular, in 1995 the Agency undertook an initiative to revise the current vehicle compliance program, including the durability protocols. The Agency is currently considering promulgating regulations which would become effective with the 2000 model year. Because, as of today's date, these regulations are still in the pre-proposal stage, it is not possible to provide manufacturers with a firm effective date. Therefore, the Agency believes today's action of indefinitely extending the existing RDP I regulations will satisfy the industry's need to plan its durability programs and will retain the current durability options which can be improved upon in future actions.

The rule being adopted today was previously promulgated as a direct final rule (61 FR 58618), but due to adverse comment submitted to EPA, the DFR was withdrawn (62 FR 11082) and a proposal was simultaneously published (62 FR 11138).

II. Comments and EPA Response

A. Comments

A total of six written comments were received during the public comment period for the NPRM. Three were from the automotive manufacturing industry, one from a group of associations representing an industry commonly referred to the as the automotive ''aftermarket'', that is, manufacturers of automotive parts and components to be used as replacements in existing cars and trucks, one from the Ethyl Corporation, a manufacturer of fuel additives for use in gasoline, and one from Envirotest Systems, a provider of centralized vehicle emissions testing programs for states and municipalities.

The automotive industry comments were from Ford, General Motors and a joint submission from Association of International Automobile Manufacturers (AIAM) and American Automobile Manufacturers Association (AAMA), which represent the majority of automotive manufacturers with U.S. markets. All of the automotive

comments were consistently supportive of the extension of the RDP I regulations. GM and Ford specifically commented that the final rule should be promulgated as soon as possible due to their plans to utilize RDP I procedures in the 1999 model year. All automotive comments supported the indefinite extension of RDP I because of the uncertainty of the implementation date for the new certification compliance regulations planned by the Agency.

All automotive comments expressed a concern that the manufacturer-derived durability processes allowed under the RDP I regulation be held by EPA as proprietary and confidential, as allowed under section 7542(c) of the Clean Air Act. GM expressed the opinion that their alternative durability processes constitute trade secrets and commercial information within the meaning of Section 1905 of Title 18 of the United States Code and is therefore entitled to confidential treatment pursuant to section 208(c) of the Clean Air Act, Sections 552(b)(4) and 552(c)(4) of the USC (Exemption 4 of the Freedom of Information Act), and Part 2, of Title 40 of the Code of Federal Regulations.

Envirotest Systems stated that it did ''not oppose EPA's proposal''. But it requested that EPA ''provide assurance to the public that information describing the nature of any undefined test procedures upon which the Agency's certification decisions are based [be] made available to the public upon request'', citing EPA's Freedom of Information Act regulations which require information which is emission data to not be considered confidential. It also expressed ''strong reservations'' about any plans the Agency may have for replacing the I/M 240 Inspection/Maintenance program with a program which inspected the vehicles' on-board diagnostic (OBD II) systems to determine pass fail emission status.

Ethyl Corporation, represented by Hunton & Williams, similarly stated that it did ''*not* oppose *per se* reliance upon the range of test procedures which would be authorized by EPA's proposal''. However, it presented three arguments for requiring the public release of certain information which manufacturers may have provided to EPA during the RDP I process. First, Ethyl argued that any information that EPA relies upon to support its certification decisions cannot be deemed confidential, because such decisions are subject to judicial review, and any information used to make certification decisions which is relevant to that decision must be subject to public review. Second, similarly to Envirotest, Ethyl claimed that any information qualifying as ''emission data'' or a ''standard or limitation'' under the Clean Air Act is not eligible for confidential treatment, citing the EPA FOIA regulations at 40 CFR 2.301. The third argument Ethyl presents is that General Motors, in its comments on this rulemaking, has not stated valid grounds to support a trade secret claim, under the FOIA requirements at 40 CFR 2.204(e)(4)(viii).

The consortium of aftermarket parts associations opposed the proposal because it did not require ''that a description of [certain manufacturer-specific procedures], including onboard diagnostic-related information, is made available for public inspection and review.'' Again, FOIA was cited as well as the Clean Air Act sec. 208(c), 202(m), and 206.

B. EPA Response

EPA is adopting as final the proposed extension of RDP I rules to beyond the 1998 model year. It is of no benefit to the Agency, to manufacturers, or to the general public to discontinue the RDP I regulation and revert back to the outdated 50,000-mile AMA durability procedures. The automotive industry uniformly and strongly supports the extension of RDP I. All negative comments center around the availability of information which manufacturers may have provided EPA during the RDP I approval process, not the actual process itself. EPA is not determining in today's rule the confidentiality of any information submitted by manufacturers. There is already a separate, well-established procedure for making such determinations. EPA's information disclosure process, as mandated by the Freedom of Information Act (FOIA), requires that the submitters of the information bear the burden of proof for substantiating claims of information confidentiality. Requests received for information which the manufacturer has identified as confidential business information are handled in accordance with the procedures in 40 CFR part 2, subpart B. The Agency will continue to follow these procedures to make confidentiality determinations of manufacturer information. Again, this process is separate from the certification process, hence the RDP I regulation will continue to be in effect, and information submitted to EPA during the RDP I approval process will be handled and disseminated in accordance with the existing regulations.

The Agency is unable to determine how Envirotest's request that OBD II not be used to replace the I/M 240 test applies to the RDP I rule being promulgated today. Envirotest did not submit any information which tied the I/M 240 test or OBD II regulations to RDP I, other than stating that some manufacturers have made confidentiality claims on certain OBD information. OBD (CAA section 202(m)) issues and the relationship between OBD and I/M requirements have been addressed in separate rulemakings. See, for example, 61 FR 40940 (August 6, 1996). Therefore, the Agency is not addressing this comment in today's rule.

As they discussed in their comments, Ethyl has previously requested manufacturer information held by EPA, which has been claimed as confidential. Ethyl has appealed this claim, which is currently under consideration by EPA's Office of General Counsel. Ethyl also takes issue with the legal arguments presented by GM in their comment submitted to the Docket for this rulemaking. The purpose of today's rule is not to make a determination under FOIA if manufacturer information is or is not confidential or if a manufacturer's justification for confidentiality is or is not valid. The purpose of today's rule is to provide effective regulations requiring manufacturers to demonstrate that the vehicles they make are durable and will comply with emission standards for their useful lives. As stated above, EPA will continue to uphold the statutes and regulations regarding the disclosure of information to the public using the procedures already established for this purpose. Those opposed to the determinations made have appeal rights under 40 CFR 2.205 through EPA's Office of General Counsel.

The aftermarket associations requested that EPA in its RDP I rule *require* manufacturers to publicly disclose all information concerning RDP processes. EPA is not adopting this requirement because it did not propose to do so, and furthermore believes that the more appropriate venue to handle public disclosure of information is via the existing FOIA procedures, not through this rulemaking.

III. Environmental Effects and Economic Impacts

A. Economic Impacts

This action extends an existing program without modification, and as such, the Agency does not expect any new economic impacts over and above those described in the interim rulemaking. In general, the RDP–I interim rulemaking projected annual cost savings with respect to the previously existing program of approximately $8.6 million, and

although this number is highly dependent upon the interaction of several variables, all modeled scenarios resulted in some level of savings. A complete description of those impacts is contained in 58 FR 3994 (January 12, 1993).

B. Environmental and Cost-Benefit Impacts

The RDP I rulemaking revised testing and administrative procedures necessary to determine the compliance of light-duty vehicles and light-duty trucks with the Tier 1 emission standards promulgated in June 1991, and no environmental benefit was claimed over and above that already accounted for in the Tier 1 rule. Today's action will similarly claim no environmental benefit. A detailed discussion of the Tier 1 environmental impacts can be found in 56 FR 25734 (June 5, 1991).

IV. Public Participation and Effective Date

This final rule is effective on September 22, 1997.

A public hearing was scheduled, but canceled due to the lack of any participants.

During the public comment period, six written comments were received. These are addressed in Section II. above.

V. Statutory Authority

Authority for the actions promulgated in this final rule is granted to EPA by sections 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a), and 5 U.S.C. 553(b)).

VI. Administrative Designation

Under Executive Order 12866, the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VII. Impact on Small Entities

The Regulatory Flexibility Act requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to develop a proposed Regulatory Flexibility Analysis.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this rule. This rule will not have a significant adverse economic impact on a substantial number of small businesses subject to this rulemaking. This rulemaking will continue to provide regulatory relief to automobile manufacturers by offering options for durability demonstrations and at the same time by maintaining consistency with California durability requirements. It will not have a substantial impact on such entities.

In the absence of the rule, the expiration of the § 86.094–13 provisions for light duty exhaust durability procedures would result in the need all manufacturers to perform time-consuming, expensive durability procedures. Manufacturers would also be required to perform separate durability demonstrations for California.

Therefore, EPA has determined that this regulation does not have a significant impact on a substantial number of small entities.

VIII. Reporting and Recordkeeping Requirements

Today's action does not impose any new information collection burden, because this action merely extends the applicability of the previously existing regulation, including information collection. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in 40 CFR 86.094–13 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned ICR No. 2060–0104.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the ICR document(s) may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., SW. (mail code 2137); Washington, DC 20460 or by calling (202) 260–2740. Include the ICR number in any correspondence.

IX. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

X. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (signed into law on March 22, 1995) requires that EPA prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 of the Unfunded Mandates Reform Act requires EPA to establish a plan for obtaining input from and informing, educating and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless EPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is expected to result in the expenditure by state, local and tribal governments or private sector of less than $100 million in any one year, EPA has not prepared a budgetary impact statement or specifically addressed selection of the least costly, most cost-effective or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, EPA is not required to develop a plan with regard to small governments.

List of Subjects in 40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: August 15, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 86 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 is revised to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 86.094–13 [Amended]

2. In § 86.094–13, paragraphs (a)(1), (c)(1), (d)(1), (e)(1), and (f)(1) are amended by revising the words ''1994 through 1998'' to read ''1994 and beyond''.

§ 86.094–26 [Amended]

3. In § 86.094–26, paragraphs (a)(2), (b)(2)(i), and (b)(2)(ii) are amended by revising the words ''1994 through 1998'' to read ''1994 and beyond''.

[FR Doc. 97–22368 Filed 8–21–97; 8:45 am]

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